THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No.27062 of 2006

28-12-2006

Between:-

C. Pushpalatha

Petitioner

And

State of Andhra Pradesh
Rep.by its Principal Secretary,
Endowment Department, Hyderabad and four others.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 27062 of 2006

Oral order:

The petitioner claims to be a lessee of a site belonging to the fifth respondent – Kandula Govindacharyulu Trust, Tirupati, Chittoor district, an endowment institution, covered and governed by the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act'). The petitioner asserts to have been granted a lease in 1996 for a period of five years on terms, which entitles renewal automatically, but on conditions.

In the year 2001, O.A.No. 119 of 2001 was *suo motu* taken up by the third respondent for declaring the petitioner as an 'encroacher' and for directing her eviction. According to the petitioner, without affording

reasonable opportunity of appearance and contest, on 23-10-2006 an order was passed by the third respondent in O.A.No. 119 of 2001 declaring the petitioner to be an 'encroacher' and directing the petitioner to remove the encroachment within fifteen days from the date of order and handover the vacant possession of the property to the fifth respondent. In default, the third respondent was directed that action would be taken under Section 84 of the Act for removing the encroachments. The petitioner received this order on 13-11-2006 and on the same day filed an application seeking setting aside the *ex-parte* order of eviction.

Further, according to the petitioner, on 21-12-2006, the endowment officials came to the site and threatened eviction of the petitioner whereupon she rushed to the Hyderabad and on 22-12-2006 filed the writ petition. While so, on 23-12-2006 before the writ petition could be taken up for consideration, the respondents, in particular the fifth respondent is stated to have put a lock on the premises, earlier in the occupation of the petitioner.

Sri Dama Seshadri Naidu, learned counsel for the petitioner would urge that as the petitioner's application for setting aside the *ex-parte* order filed on 13-11-2006 is pending, it would be in the interests of equity and justice that the possession of the petitioner should be continued till the disposal of the said application particularly since the

petitioner is in continuous possession, occupation and enjoyment of the property in question since 1956. This court is not inclined to record any finding, conclusions or make observations on the legitimacy or otherwise of the petitioner's status as a lessee within a frame work of the Act and the relevant rules. These areas are more appropriately considered either in the O.A. itself, if the petitioner's application dated 13-11-2006 seeking setting aside the order in the O.A. is favourably considered or in any remedies the petitioner may pursue against the order in the O.A. As the petitioner's application dated 13-11-2006 does not call for a substantive adjudication, the third respondent should in all fairness, dispose of the petitioner's application for setting aside the *ex-parte* order expeditiously.

In the circumstances, the third respondent is directed to consider and dispose of the petitioner's application dated 13-11-2006 seeking setting aside of the *ex-parte* order dated 23-10-2006 in O.A.No. 119 of 2001, expeditiously and in any event within a period of three days from the date of receipt of a copy of this order. The reasoned decision of the third respondent to be passed shall be communicated to the petitioner within the aforesaid time. Nothing in the order of this court shall be construed as an expression by this court on the merits of the application of the petitioner or on the merits of the

petitioner's claim to being a lawful lessee of the property of the fifth respondent. The third respondent shall consider the application of the petitioner on its own merits and dispose of the same in accordance with law. The writ petition is disposed of at the stage of admission after hearing the learned Government Pleader for Endowments. No costs.

_____

GODA RAGHURAM, J

Dated:28-12-2006
Pvks/*